Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Rulemaking to Establish	)	CC Docket No. 02-229
Revised Per-Call Payphone	)	
Compensation Rate	)	

COMMENTS BY RNK ON THE PETITION FOR RULEMAKING TO ESTABLISH REVISED PER-CALL PAYPHONE COMPENSATION RATE

INTRODUCTION

RNK, Inc. d/b/a RNK Telecom ("RNK") is an interexchange carrier (IXC) with section 214 authorization, providing, among various services, retail and wholesale prepaid calling card services using toll-free access numbers. Beyond RNK's three-state facilities footprint, it provides those services as a switch-based reseller (SBR) of other IXCs' 8XX originating transport and switching facilities. RNK maintains a debit card Personal Identification Number ("PIN") authentication platform and switching facilities through which all incoming toll-free access call attempts are directed, and through which RNK routes the outbound leg of the call to the originating end user's called party. As such, RNK, by its contracts with large national carriers, is subject to the payphone reimbursement scheme currently in effect at the Federal Communications Commission (FCC or Commission).

RNK suggests that the changes since the "Third Order and Report and Order on Reconsideration of the Second Order and Report and Order," *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd. 2545 (1999) ("Third Order and Report") in this proceeding, in the complexion of the payphone dial-around originating usage, including the explosion of the prepaid calling services industry and its use of "toll-free" access numbers, materially affect the premises on which that Order and the instant Petition are based. Further, those changes require revisiting the *Third Order and Report's* market demand assumptions, in light of the very causes of payphone demand increase cited by Petitioners.

The actual effects of the payphone surcharge on end users, as such effects relate to the equitable apportionment of payphone cost recovery, require renewed evaluation of the appropriate mechanisms for setting a default payphone compensation charge. Accordingly, it would be inappropriate to effect any increase in the payphone surcharge only after delay, and only incrementally to allow for market adjustment.

I. THE SBR CALLING CARD PROVIDER AND THE END USER SURCHARGE

The other IXCs serve as the "first IXC," obligated to compensate the Payphone Service Providers (PSPs) at the current default rate of $0.24, and pass the charge through to RNK with an administrative mark-up, in most cases approximately 10%. As is industry norm, RNK passes the surcharge through to its wholesale customers, and ultimately to the end users, by debiting their cards in an amount to cover the effects of the charge. In effect, in the context of prepaid calling services, it is the originating user that incurs the "toll-free" cost.

Currently, the charge to the end user is typically in the \$0.50 - \$0.59 range, the level which the Petitioners deem "market rate" for coin calls. RNK makes no profit on this charge. A \$0.50 real time depletion to the end user on a calling card represents on average only \$0.35 in revenue to RNK, because of the industry standard "discount" provided by PIN wholesalers to their customers and distributors. *See, e.g., 26 U.S.C. 49 et seq*. (the Federal Communications Tax, acknowledging a standard 35% discount). This revenue is further subject to state use taxes, Federal Communications Tax, and USF obligations, amounting in the aggregate on average to another 12-18% of revenue. In all, by definition, any payphone surcharge default rate imposed by the FCC, to be paid by the "first IXC" to the PSPs, results in at least double that charge to calling card users. Lastly, RNK points out that the current payphone surcharge rates are both incorporated into existing contracts among relevant service providers at every level, and in most cases are actually printed on the physical cards that end users have purchased, creating certain expectations and, in some cases, legal obligations not to raise the charge until the next market cycle.

II. MARKET ADJUSTMENT

RNK does not imply that it is entitled in any way to any profit on those FCC-imposed charges it may or must pass through to the end user; rather, it attempts to set out for the Commission's consideration, in its simplest form, the effect of the payphone surcharge on the typical toll-free service end user – in this case, calling cards but the same arithmetic could apply to any other wholesale SBR market. Especially in light of the primary factor the Petitioners cite alleging increased per-call cost: the decrease in overall payphone use, i.e., due to cell phone proliferation – a relative luxury, the *Third Order and Report* assumptions of uniform demand may be faltering.

RNK contends that should the Commission see fit to maintain and reapply its methodology under the *Third Order and Report*, as the Petitioners request, and conclude that PSP costs merit an increase in the default rate, that the Commission would only impose such an increase after a reasonable delay, and only incrementally, to allow the market to adjust.

III. THE END USER AND THE PUBLIC INTEREST

Due to the same market bifurcation (cell phone v. pay phone), the public and Congress' interests in maintaining ubiquitous payphone availability bears even more importantly on those end users "still" using payphones and likely are least able to afford a radical increase in charges. RNK notes that the Commission has already considered the problematic ramifications of transferring significant costs to the originating user:

> One possible way around this problem would be to switch to a caller-pays system where callers are required to insert coins (or to use a credit card) to place dial around or toll-free calls. However, as explained in the Commission's prior orders, and again below, this approach appears to contradict congressional directives set forth in other sections of the Act. Furthermore, a caller-pays system would impose significant extra transactions costs on payphone users because they would have to either insert coins or enter another credit card number in order to make these types of calls. Therefore, it is not clear that a caller-pays system would either be legal under current statutes or desirable. *Third Order and Report at ¶42. (Footnotes omitted.)*

Also, as the Commission repeatedly acknowledged in the *Third Order and Report,* the payphone charge and the deregulated market coin charges are intended to offset, in roughly equal proportion what is mainly the fixed costs of the payphone, as the marginal cost of either type of call is relatively small in comparison; in fact the marginal cost of dial-around calls was found, and has again been proffered by Petitioners to be *less* than that of a coin call. Any increase in the "dial-around" compensation rate (first set at $0.24 when the going coin rate was $0.35), unfairly shifts the compensation burden onto the dial-around user.

> As we discussed above, the vast majority of the costs of providing payphone service are fixed and common costs, and there is no one economically correct way to allocate such costs among the different types of calls that may be made from a payphone. Economic theory does suggest, however, that the costs of one service should not be cross-subsidized by another service. That is, consumers making one type of call, such as a local coin call, should not pay a higher amount to subsidize consumers that make other types of calls, such as dial-around or toll-free calls. In order to avoid a cross-subsidy between two such services that are provided over a common facility, each service must recover at least its incremental cost, and neither service should recover more than its stand-alone cost. *Third Order and Report at ¶42. (Footnotes omitted.)*

CONCLUSION

In conclusion, RNK respectfully requests, in light of the present Petition and the *Third Order and Report* it attempts to address, that the Commission now consider:

(a) the interim changes in the complexion of the payphone dial-around originating usage, including the explosion of the prepaid calling services industry and its use of "toll-free" access numbers;

(b) revisiting the *Third Order and Report's* market demand assumptions, in light of the very causes of payphone demand increase cited by Petitioners;

(c) examine the actual effects of the payphone surcharge on end users, as such effects relate to the equitable apportionment of payphone cost recovery;

(d) effecting any increase in the payphone surcharge only after delay, and only incrementally to allow for market adjustment.

Respectfully submitted,
RNK, Inc. d/b/a RNK Telecom,
By its attorney,
_____________/sig/_______
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